lar election should be fined $2.50. This was a bold attempt to bring out the stay-at-home vote, and would very likely have met with considerable success. Unfortunately, however, a delinquent voter objected to paying the fine, the matter was taken into the courts, and the provision in the city charter was declared unconstitutional. The opinion of the court has not yet come to hand, but so far as can be learned from the quotations that have appeared in newspapers and legal journals, it consists largely of talk about the degradation of the franchise which results from associating it with the money value of a vote. Unless there is some peculiar provision in the Missouri Constitution, the decision seems wrong. In the ordinary constitution the only clause which an enactment like that in question could violate is that which guarantees liberty to every citizen. If the word "liberty" be given the very broad meaning, which courts to-day often ascribe to it, of liberty to enjoy all civil rights, possibly it is unconstitutional to compel a man to vote. But that the framers of the Constitution in all probability used the word in its primary and natural sense of mere freedom from bodily restraint, is clearly the better view. See an article on the subject by Mr. Charles E. Shattuck, in 4 HARVARD LAW REVIEW, 365. With that clause of the Constitution out of the way, it is hard to see why the legislature has not the power to make the exercise of the right of suffrage a legal duty. Whether or not such an experiment would lead to satisfactory results is another question.

TRIAL BY EIGHT JURORS. — Among the extensive changes in the jury system made by the recent Constitution of Utah is the provision that, "In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors." In *State* v. *Bates*, 47 Pac. Rep. 78, it was contended that in a criminal case it is a violation of the Fourteenth Amendment to have but eight jurors." The court, however, shortly and effectively disposes of the objection. The amendment does not define the privileges and immunities of citizens of the United States, but, whatever they are, the power of a State to establish tribunals is not limited by the provision. Nor are twelve jurors necessary to due process of law, which is a requirement of trial according to law, both as to the substance of the crime and the mode of procedure. It does not determine what is crime, nor does it establish any mode of procedure. It is a shield against the exercise of arbitrary power, but does not prevent changes in the law.

This is an interesting decision, more for the novelty of the question than for any difficulty. In most State constitutions the trial of crimes by a common-law jury of twelve is secured. The case of *Copp* v. *Henniker*, 55 N. H. 179, is instructive on the scope of such provisions. It is well settled that in civil actions trial by jury is not necessary. *Walker* v. *Sauvinet*, 92 U. S. 90. See also *Higgins* v. *Farmers' Ins. Co.*, 60 Iowa, 50, where there was a jury of six. But no real distinction can be drawn in this respect between civil and criminal cases. In *Hurtado* v. *California*, 110 U. S. 516, the Supreme Court decided that indictment by a grand jury is not necessary. The same principle was involved.

The Constitution of Utah also provides that, "In civil cases, three fourths of the jurors may find a verdict." An agitation for some such change has recently been started in New York, in order to prevent one or two obstinate jurors from forcing the others to render an unreasonable

verdict. Not to require unanimity in criminal cases, however, strikes one as of doubtful propriety. Yet there would seem to be no constitutional difficulty, apart from special provisions in State constitutions, that does not exist equally in civil cases. If sounder verdicts are to result in civil cases, why not also in criminal? Such a trial is arbitrary in both or in neither. However, before advocating the change in criminal cases it would be better to have it demonstrated by experience that good results do follow in civil cases.

THE SOUTH CAROLINA DISPENSARY LAW UNCONSTITUTIONAL. — The Dispensary Law of South Carolina has just been declared unconstitutional in *Scott* v. *Donald*, 17 Sup. Ct. Rep. 265. This measure has attracted attention throughout the country by reason of its many novel features. Furthermore, the name of its well known author, Senator Tillman, has served to invest the law with an unusual amount of popular interest. The statute in question was peculiar in several respects. It did not purport to prohibit entirely the manufacture and sale of intoxicants, but placed the complete control of this business in the hands of the State. The essential provisions of the law were, that retail sales of liquor should be made only by certain dispensers authorized by the State; that these dispensers should be supplied by the State commissioner; that the commissioner should purchase from the manufacturers, and submit all liquor so purchased to the State chemist for examination; and not until the liquor had been pronounced pure and so labelled was the commissioner permitted to distribute it for selling purposes among the dispensers. No one except the commissioner could buy either from persons within or without the State, unless such persons were dispensers. In his purchases the commissioner was required to give to home producers the preference over those of other States. The profits of the trade were to be divided between the State and the different counties.

The opinion of the majority of the court, in an exhaustive review of all recent cases in which similar points were involved, declares that the measure cannot be considered an inspection law, since the citizens are prohibited from importing all liquors whether pure or impure; and that it is an unwarrantable obstruction to commerce, as discriminating unfairly against the products of other States. It was argued in favor of the law, that such legislation was made possible by the "Wilson Bill," so called, enacted by Congress soon after the famous case of *Leisy* v. *Hardin*, 135 U. S. 100. This bill was passed for the express purpose of allowing States to legislate upon imported liquors as fully as upon those of domestic manufacture. But the decisive answer to this contention was, that the Dispensary Law did not affect residents and non-residents of the State alike. The "Wilson Bill" was not intended as a protection to partial and discriminating legislation. It allowed absolute prohibition, or such regulations as operated equally upon all. But there must be uniformity. The citizens within the State could not be treated in one way and those outside in another. Upon this broad ground the majority of the court seem principally to base their decision.

Mr. Justice Brown, in his dissenting opinion, while admitting the possible invalidity of some parts of the law as having a discriminating effect, yet holds that this does not apply to the main provisions, which should